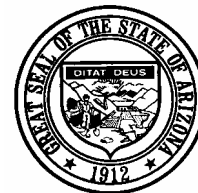


ARIZONA TAXNEWS



Janet Napolitano, Governor

J. Elliott Hibbs, Director

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ARIZONA DEPARTMENT OF REVENUE

MISSION STATEMENT

To administer tax laws fairly and efficiently for the people of Arizona.

WE'RE ON THE WEB!

The Arizona TaxNews can be viewed on our Internet website:

www.azdor.gov

KERR UPDATE

In prior issues of Arizona TaxNews, the department discussed *Kerr v. Waddell*, 183 Ariz. 1, 899 P.2d 162 (App.1994), and the subsequent Court of Appeals decisions in *Kerr v. Killian*, 201 Ariz. 125, 32 P. 3d 408 (App 2001) and 204 Ariz. 485, 65 P.3d 434 on motion for reconsideration. To summarize, the issue in *Kerr* was whether Arizona's income tax scheme for tax years 1991 and after violated the intergovernmental tax immunity doctrine because it effectively subjected federal employees' mandatory

retirement contributions to current taxation, while deferring taxation of similar contributions by state and local employees. Contributions to the retirement system by federal employees are made using income that is subject to federal tax (i.e., the income that is used is part of FAGI). Section 414(h) of the Internal Revenue Code allows state governments to "pick up" mandatory contributions of their employees to the retirement plans which has the effect of excluding the contributions from FAGI.

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2004 ARIZONA LEGISLATIVE SUMMARIES

The 2004 Legislative Summary is a brief summary of the tax-related bills that were enacted by the Arizona Legislature and approved by the Governor. This month: Property Tax and Miscellaneous. This is the last of the series.

The general effective date is **August 25, 2004** unless otherwise stated. Copies of these bills can be downloaded at www.azleg.state.az.us/FinalDisposition.asp or may be requested from the Secretary of State's Office by calling (602) 542-4086.

HB 2040 (Chapter 61) 2004 Tax Corrections Act

HB 2040 makes technical, conforming and clarifying changes to Arizona tax statutes.

- Requires DOR to determine the location (or apportionment) of pipeline property by November 30 instead of August 31. Also, clarifies that this is done yearly.
- Clarifies that full cash values of airline and private car companies' properties are public record.
- Eliminates reporting the apportionment of telecommunication companies' valuation from DOR to all local jurisdictions and instead, requires DOR to report the necessary information only to county assessors.

HB 2258 (Chapter 295) Property Taxes; Exemption; Corrections

HB 2258 makes changes regarding the county assessor's procedures for tax assessments and appeals. The provisions of the bill include:

- Allows property tax agents to act on behalf of the taxpayer to discuss tax matters with the county assessors, DOR or the County or State Board of Equalization.
- Requires the county assessor to make any necessary changes in the tax roll and records from reviews or corrections of errors and omissions, in addition to any changes from judicial and administrative appeals.

(Continued on page 4)

*****REMINDER*****

FOR NON-EFT TPT FILERS

To avoid a delinquency, postmark your October 2004 TPT return no later than November 26, 2004 or deliver to DOR no later than November 29, 2004.

The Tax Facts—Summary of General Fund Revenues & Individual Income Tax Receipts—are available on the department's website, www.azdor.gov

E-Mail Your Questions

If you have a question that you cannot find the answer to, our Technical Assistance personnel may prove useful to you. We will gladly respond to any e-mail technical tax inquiry. All inquiries will be responded to within two working days.

E-mail your question to:

TaxpayerAssistance@azdor.gov

In the interest of maintaining confidentiality, DOR cannot respond to inquiries that include a Social Security number, FEIN, TPT or W/H number, or other specific taxpayer identifiers.

Department of Revenue Telephone Numbers & Web Addresses

Individual & Corporate Income Tax

..... (602) 255-3381

Toll-free from

area codes 520 and 928..... (800) 352-4090

Transaction Privilege, Use, Withholding Tax, Licensing..... (602) 255-2060

Toll-free from

area codes 520 and 928..... (800) 843-7196

Hearing Impaired TDD User .. (602) 542-4021

Toll-free from

area codes 520 and 928..... (800) 397-0256

To order forms by phone (602) 542-4260

Forms by fax (602) 542-3756

Forms and instructions are also available on our website at www.azdor.gov

Businesses can now register, file and pay online at www.AZTaxes.gov

TAX CALENDAR

NOVEMBER 2004

Due Date		For Period Ending
1	Withholding Tax: Form A1-QRT	9/30/04
11	State Holiday - Veteran's Day, All State Offices Closed	
15	Income Tax Returns:	7/31/04
	Form 120: Corporation	
	Form 140: Individual	
	Form 141: Fiduciary	
	Form 165: Partnership	
15	Form 120: Corporation with Automatic Extension	1/31/04
15	Form 120S: S Corporation	8/31/04
15	Form 99: Exempt Organization Annual Information Return	6/30/04
	Form 99T: Exempt Organization	7/31/04
15	Form 120ES: Estimated Tax Payment, Corporation	
	First Installment	7/31/05
	Second Installment	5/31/05
	Third Installment	2/28/05
	Fourth Installment	11/30/04
22	Form TPT-1: Transaction Privilege Tax: October Monthly Filers	10/31/04
22	Bingo: Financial Reports	10/31/04
22	Luxury Tax: Various Forms	10/31/04
25	State Holiday - Thanksgiving, All State Offices Closed	
26	EFT Form TPT-1 and Payment: Transaction Privilege Tax: October Monthly Filers	10/31/04

Withholding Tax Payment Information:

If the average amount of Arizona income taxes withheld in the preceding four calendar quarters **exceeds** \$1,500 the employer must make its Arizona withholding payments to the Department of Revenue at the same time as the employer is required to make federal withholding deposits.

If the average amount of Arizona income taxes withheld in the preceding four calendar quarters **does not exceed** \$1,500 the employer must make its Arizona withholding payments to the department on a quarterly basis.

The *Arizona TaxNews* is a publication of the Arizona Department of Revenue. Information contained herein is of a general nature and is not designed to address complex issues in detail. Taxpayers requiring information concerning a specific tax matter should contact the appropriate office. This newsletter is available in an alternative format upon request. Subscription information may be obtained from the Publications Unit at 602-716-6797 or toll free from area codes 520 & 928, 1-877-863-0655.

CHANGES ON HORIZON FOR AZTAXES.GOV

More changes are on the horizon for the department's website for business registration and online filing and paying of transaction privilege and withholding taxes, www.AZTaxes.gov.

- By the end of the year, employers will see consolidation of correspondence – starting with collection letters, which will reference both transaction privilege tax (TPT) and withholding accounts, as applicable.
- Withholding reporting forms were updated a few months ago to prepare for the conversion to the new BRITS computer system.

- Many TPT and withholding taxpayers have taken advantage of online filing and payment options at www.AZTaxes.gov since the beginning of 2004.
- Now withholding financial information (payments, billings, etc.) can be viewed on the website.

For assistance with online filing, contact Taxpayer Information & Assistance at 602-255-2060, or toll-free from area codes 520 and 928, 1-800-843-7196.

Kerr Update

(Continued from page 1)

Arizona chose to pick up the state contribution. Congress has not chosen to grant similar benefits to federal employee contributions. Since Arizona starts with FAGI, the income used to make the state contributions is not subjected to Arizona tax while the federal contributions are subjected to Arizona tax. The Court of Appeals held that this scheme violated 4 USCA §111.

The Department of Revenue filed a petition for review with the Arizona Supreme Court. The Supreme Court accepted the department's petition for review and in an opinion dated February 13, 2004, the Supreme Court reversed the decision of the Court of Appeals. *Kerr v. Killian*, 207 Ariz. 181, 84 P.3d 446 (2004). In its decision, the Supreme Court held that the state income tax code does not discriminate against federal employees because of the source of their pay or compensation, and thus does not violate the intergovernmental tax immunity doctrine, codified in 4 U.S.C. § 111(a) (2000). The Arizona Supreme Court opinion may also be accessed at http://www.supreme.state.az.us/opin/pdf2004/CV_03_0110_PR.pdf.

The opinion first set out the long and complicated history of the case. The Supreme Court then reviewed whether the Arizona state income tax discriminated against federal employees "because of the source" of their compensation. If the alleged discrimination is not because of the federal source of income, but rather for some other reason, there is no violation of the intergovernmental tax immunity doctrine.

In the opinion the court noted that every United States Supreme Court decision cited by respondents in which a state tax was found to violate 4 U.S.C. § 111(a) or the

intergovernmental tax immunity doctrine involved a tax statute which discriminated on its face against federal employees or federal property. By contrast, A.R.S. § 43-1001(2) contains no overt discrimination against any taxpayer because of the source of pay. Every Arizona taxpayer, whether employed by the federal government, the State, a political subdivision, or a private employer, begins with federal AGI as the Arizona income tax base.

The Plaintiffs in the *Kerr* case filed a Petition for Writ of Certiorari with the United States Supreme Court on May 3, 2004. On October 4, 2004 the Supreme Court denied the Petition for Writ of Certiorari. *Moran v. Hibbs*, --- S.Ct. ---, 2004 WL 1191151, 72 USLW 3702, 73 USLW 3060 (U.S.Ariz. Oct 04, 2004). There are no further appeals available. This resolves the issues for tax years after 1990 presented in this case.

The department had received approximately twenty thousand individual claims for refunds by federal employees for tax years 1991 forward. These claims may now be denied based on the Arizona Supreme Court's decision and the United States Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari. Taxpayers will have the right to protest denials of their claims for refund.

Some federal employees deducted their federal retirement contributions on their Arizona state income tax returns for tax years after 1990. Federal employees who deducted their federal retirement contributions can be audited for any years open under the audit statute of limitations.

2004 Legislative Update

(Continued from page 1)

- Removes the requirement for the court to hear property appeals within 270 days.
- Includes in the property tax exemption for institutions for the relief of indigent or afflicted any administrative buildings or property.
- Establishes a new property tax exemption for any non-profit organizations that provide financial support for public libraries.

SB 1004 (Chapter 329) Property Tax Exemption; Widows

SB 1004 increases the value of a home eligible for a \$3,000 property tax exemption for widows, widowers and disabled persons. Specifically, the bill provides:

- An increase in the value of a residence from \$100,000 or less to \$200,000 or less for widows, widowers, or disabled persons to qualify for a \$3,000 property tax exemption.
- On or before December 31 each year, DOR is required to increase this residence assessment limit of \$200,000 based on annual inflation as determined by the GDP price deflator.

SB 1091 (Chapter 15) Property Tax Corrections

SB 1091 allows county assessors to send notices of valuation error to property owners at any time in the tax year (defined for all property tax purposes as the "calendar year"). A notice of error in property valuation or a notice of claim is effective only during the current year and the 3 immediately preceding years. Even if the taxpayer consents to the correction but disputes the valuation, the tax roll will be corrected and the corrected value will be effective for the current and subsequent years unless a court determines otherwise.

It defines the term "Tax Year" and specifies which tax years are covered in a "Notice of Error" used by the assessors and a "Notice of Claim" used by a taxpayer to request correction of real and personal property tax roll errors.

MISCELLANEOUS

SB 1353 (Chapter 311) Cigarettes; Delivery Sales

Establishes requirements for tobacco product delivery sales, including verification of the purchaser's age, registration and reporting requirements and collection of taxes when they were not already paid. Exempts tribal sales and establishes penalties for non-compliance with provisions.

HB 2059 (Chapter 135) Disposition of Proceeds; Abandoned Property

HB 2059 addresses the disposition of excess proceeds from trustee sales that have been deposited with the county treasurer; the presumption of abandonment for certain types of property; and the reporting of excess

proceeds to the Arizona Department of Revenue.

The bill stipulates the following:

- Excess proceeds deposited with the county treasurer are presumed abandoned after three years if there is no pending application for distribution.
- Excess proceeds of fifty dollars or less that are presumed abandoned are to be transferred to the county general fund.
- Excess proceeds greater than fifty dollars that are presumed abandoned are to be reported to the Arizona Department of Revenue on or before November 1st of each year. The report shall cover the prior fiscal year and include a copy of all documentation filed with the county treasurer. The county treasurer may assess and deduct a reasonable fee of not more than fifty dollars for the reporting expenses.
- The period for the presumption of abandonment for property held by a court, governmental subdivision, agency or instrumentality, is increased from one to three years.
- Session law at the conclusion of this chaptered legislation provides that the initial reports of excess proceeds presumed abandoned that are due November 1, 2004, derived from a trustee's sale or held by the county treasurer, shall include excess proceeds but no penalties and interest. Such reports shall also include excess proceeds that would have been presumed abandoned within twenty years prior to July 1, 2004.

SB 1415 (Chapter 284) Withholding Tax Rates; Budget Reconciliation

SB 1415 applies to all employees who are subject to Arizona withholding and their employers. This bill increases all of the withholding rates except for the lowest rate available for employees making less than fifteen thousand dollars annually. The lowest available withholding percentage for these employees remains at 10%, and the higher rates are all increased. The bill also provides session law to require the automatic increase of employees' withholding rates if they do not elect a rate of withholding.

SB 1415 is effective for tax years beginning from and after December 31, 2004.

The following table illustrates the changes to the withholding tax rates

Current rates	New Rates for 2005
10.0%	10%
18.2%	19%
21.3%	23%
23.3%	25%
29.4%	31%
34.4%	37%

(Continued on page 5)

NOVEMBER WORKSHOPS

For a complete listing of workshops or more information, please email Community Outreach & Education at seminars@azdor.gov or call 602-716-6828.

All classes cost \$15 per person.

Retail Workshops

This workshop is designed to help you understand the retail classification that is imposed in Arizona.

Chandler—November 24, 8:30 am – noon
Department of Revenue, 3191 N Washington

Glendale—November 15, 8:30 am—noon,
Quality Inn, 5511 W Bell Rd.

Mesa—November 9, 8:30 am—noon,
LaQuinta Inn, 6530 E Superstition Springs Blvd.

Peoria—November 30, 6—9 pm,
Peoria Library, 8401 W Monroe

Phoenix—November 8, 8:30 am—noon,
Windsor Palms, 2990 W Thunderbird

Phoenix—November 19, 8:30 am—noon,
Industrial Commission, 800 W Washington

Phoenix—November 29, 8:30 am—noon, Dept. of
Revenue, 1600 W Monroe, B1 conference room

Safford—November 9, 8:30 am—noon,
Eastern AZ College, 615 N Stadium

Tucson—November 16, 8:30 am—noon,
Arizona Gov't Office, 400 W Congress, Rm. 5

Yuma—November 16, 8:30 am—noon,
Convention Center, 1440 Desert Hills Dr.

Contracting Workshops

This workshop is designed to help those in the construction industry understand the transaction privilege tax requirements in Arizona.

Chandler—November 29, 8:30 am – noon,
Department of Revenue, 3191 N Washington

Glendale—November 16, 8:30 am—noon,
Quality Inn, 5511 W Bell Rd.

Mesa—November 10, 8:30 am—noon,
LaQuinta Inn, 6530 E Superstition Springs Blvd.

Phoenix—November 9, 8:30 am—noon,
Windsor Palms, 2990 W Thunderbird

Phoenix—November 16, 8:30 am—noon, Dept. of
Revenue, 1600 W Monroe, B1 conference room

Phoenix—November 22, 8:30 am—noon,
Industrial Commission, 800 W Washington

Phoenix—November 30, 8:30 am—noon, Dept. of
Revenue, 1600 W Monroe, B1 conference room

Safford—November 10, 8:30 am—noon,
Eastern AZ College, 615 N Stadium

Tucson—November 17, 8:30 am—noon,
Arizona Gov't Office, 400 W Congress, Rm. 5

Yuma—November 17, 8:30 am—noon,
Convention Center, 1440 Desert Hills Dr.

2004 Legislation

(Continued from page 4)

HB 2259 (Chapter 232) County Treasurers; Procedures

This is the annual bill that makes changes to the administrative procedures regarding county treasurers. Specifically, the bill provides:

- The monthly statement of fees collected by the county will be filed on the first day of the month, instead of the last day of the month and the requirement that the statement be filed under oath is removed.
- Changes the fee for a certified copy of a judgment foreclosing the right to redeem from \$10 to \$50 dollars and requires that \$15 of this fee is designated to the county Taxpayers' Information Fund.
- Designates that thirty days after medical examination of a deceased indigent, the public fiduciary of the county, rather than the county treasurer, receive monies and properties found upon the body.

- Clarifies that checks drawn on the county general fund not presented for payment within one year will revert to the county general fund or other appropriate fund.
- Retroactive to September 18, 2003, the board of supervisors may allow a claim for the amount of an uncashed check or warrant that is older than one year if they find that the claim is legitimate.
- Allows the county treasurer to require additional supporting information for any person who is making electronic property tax payments in excess of \$25,000. If the electronic fund does not balance with the tax parcel information, the funds will not be accepted and clarifies that if payments are delinquent, interest will accrue.
- Removes the six-month time limit for the sheriff's seizure of property after receiving a tax bill.
- Requires monies derived from the levy of the tax on issued bonds to be deposited to the Debt Service Fund rather than the Interest Fund and the Principal Fund.

SCHEDULE C-EZ CHANGE MEANS SAVINGS FOR SMALL BUSINESSES

IR-2004-119, Sept. 23, 2004

WASHINGTON — The Internal Revenue Service today announced it will expand the number of small businesses eligible to file a simplified expense form, a move that will save money and reduce paperwork burden.

The IRS will double the business expense threshold to \$5,000 from \$2,500 for filing the Form 1040, Schedule C-EZ. The change will mean a savings of 5 million hours of paperwork burden for small business taxpayers. The threshold change means approximately 500,000 more small businesses – a 15 percent increase – will be able to file the Schedule C-EZ.

“This is another example of the IRS taking the lead in reducing the burden on taxpayers. The IRS’ Office of Taxpayer Burden Reduction is continually reviewing what steps we might take that will save money and work hours for both businesses and individuals,” said Mark W. Everson, Commissioner of the IRS.

The Form 1040, Schedule C-EZ was first established in 1992. It was intended to make it easier for small businesses with modest expenses to file a simplified form. Small business owners that file a Form 1040 use the Schedule C to report profits and expenses.

RULES FOR EMPLOYER PROVIDED MEALS AND LODGING

Headliner Volume 100

September 2, 2004

The Internal Revenue Service wants the public to be aware of the proper rules for deducting the cost of lodging, meals and other expenses when traveling away from home for business, particularly when furnished by the employer at no charge to the employee.

Meals and Lodging: In certain professions employers provide meals and lodging at no cost for employees away from home. No amount is deductible to the employee on his/her personal tax return in this situation because there is no out of pocket expense.

Incidental Expenses: An individual might be entitled to an employee business expense deduction for other expenses incurred while working away from home, commonly referred to as “incidental expenses.”

Examples of incidental expenses include fees out of pocket for:

- Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewardesses, etc.
- Transportation to the place where meals are taken, if meals cannot be obtained on site and if transportation is not provided.

- Mailing costs associated with filing travel vouchers or payment of employer-sponsored charge card billings.

Incidental expenses do not include expenses for laundry, cleaning or pressing of clothing, lodging taxes, or the costs of telegrams or telephone calls.

In order to claim a deduction for incidental expenses, the employee must establish when, where and why (business purpose) they were away from home. For example, barge workers or mariners could use a copy of their ship’s log to establish the information.

Employees may choose to keep track of actual incidental expenses and deduct the actual amount spent, or they may use an optional method, which allows a set amount per day. The optional method allows \$3.00 per day (effective October 1, 2003, \$2.00 prior to October 1, 2003) and no receipts are required. A tax professional can help determine the best method.

Incidental expenses are deducted on Form 1040; Schedule A, *Itemized Deductions*, as Unreimbursed Employee Business Expenses.

NEW DOR RULING ISSUED

One new ruling was recently issued by the department. It can be found on the department’s website, www.azdor.gov

- Arizona General Tax Ruling, GTR 04-2, Arizona Department of Revenue standards for abatement of penalties based on reasonable cause.

PROVIDING HEALTH CARE BENEFITS LESS TAXING THAN MANY SMALL BUSINESS OWNERS THINK

While many small business owners struggle with the decision to provide health insurance benefits because of potentially prohibitive costs, few are aware of the inherent tax advantages to offering health coverage to its employees.

A recent study quoted by the Employee Benefit Research Institute indicated that more than 57 percent of small business owners – those who employ 50 or fewer workers or who are self-employed – were unaware that they could deduct up to 100 percent of the premiums paid for their employees' health plan. In addition, providing health coverage as part of a compensation package can also reduce payroll taxes for employers. Employees can reap tax benefits as well because their premiums may be paid with pre-tax dollars.

Healthcare Group of Arizona, the state-sponsored program that provides affordable health care coverage to small businesses and sole proprietors, offers a variety of HMO plans and options.

Designed to avoid the high administrative costs generally associated with health coverage for small businesses, Healthcare Group makes health insurance affordable to almost every small business in the state.

In Arizona today, more than 93 percent of all businesses are considered small businesses, however, only 28 percent of those firms offer employer-sponsored health coverage for their employees.

It's recommended that any business owner consult a tax adviser to learn the full tax advantages of providing health insurance for its employees.

E-FILE UPDATES

Man alive – it's 2005 and there will be some changes to our e-file program.

- **EFFECTIVE IMMEDIATELY:** The registration process has changed. As long as you are currently registered with the IRS (and they have issued your EFIN) you are eligible to e-file with Arizona.

If you would like to receive e-news and alerts send an email to: efile@azdor.gov Use **subscribe** in the subject line.

- If you are filing as Married Filing Separate, you are now eligible to e-file.
- If you miss your acknowledgements, you will be able go to www.azdor.gov (on the Tax Professional page) to check them.
- You and your clients will be able to check the status of Arizona refunds online. The procedure will be similar to the IRS online procedure.
- You will have a single acknowledgement source; both your state and federal acknowledgements will be sent by the IRS.
- Conditional acknowledgements will no longer create confusion and havoc. All e-filed returns will be acknowledged only as *accepted* or *rejected*.

- Rejected acknowledgements will still be accompanied by an explanation code indicating the reason for the rejection.
- AZ8453 – No longer required to be mailed (unless you are a VITA or TCE site), but you must keep them for four (4) years.
- AZ8879 – The E-file Signature Authorization Form which was previously un-numbered has been given a new number to match the federal form.

Additional forms are eligible for e-file:

- 140 series except 140PTC, 140ET, 140ES
- AZ Schedule A series
- 221 – Underpayment of Estimated Taxes
- 131 – Claim for Refund on Behalf of Deceased Taxpayer
- All 300 series credit forms

If you would like more information, please take a look at our **new and improved** ERO Manual. It can be downloaded from our web site at www.azdor.gov. Follow the "Tax Professional" link to find it.



2004 ARIZONA TAXTALK

Tax Talk 2004 will be one full day and up to 9 hours of continuing professional education (CPE) credit is available. You will receive a wide variety of tax updates and general tax knowledge from informative presenters. This conference is a result of partnering initiatives with Arizona Forum for the Improvement of Taxation (AFIT), the Arizona Department of Revenue, and the Internal Revenue Service. The cost of this conference will be \$95 per person which includes continental breakfast, lunch, all handouts, Arizona Booklet X, and the department's tax forms CD.

Dates scheduled are:

- December 6 - Sheraton Phoenix Airport, 1600 S 52nd St., Tempe.
- December 8 - Riverpark Inn (formerly known as Pueblo Inn), 350 S Freeway, Tucson.
- December 10 - Glendale Civic Center, 5750 W Glenn Dr., Glendale.

More information will be available soon. Please check the website at www.azdor.gov, email at seminars@azdor.gov or call 602-716-6828 or toll free from area codes 520 & 928, 1-877-863-0655 for registration information.